

**REMARKS/ARGUMENTS**

**1.     *Status of the Claims***

In this Amendment, claims 11 and 14-17 are canceled. Claims 21-42 are added. Claims 1-3, 5-10, 12-13 and 21-42 are pending and under consideration with entry of this Amendment.

**2.     *Support for the Amendments***

Support for the amendments to the claims can be found throughout the specification, the drawings, and the claims as originally drafted. Support for new 21 can be found on page 12, lines 19-22 of the specification.

Support for new claims 22-42 can be found generally in the claims as originally filed as well as in Figures 10A, 10B and 12-13.

No new matter is introduced by this Amendment.

**3.     *Restriction***

Applicants hereby elect with traverse the claims of Group I (claims 1-3, 5-13 and 21, directed to  $\alpha$ -A promoter/enhancer polynucleotides). In light of a phone conversation with the Examiner, it is Applicants understanding that claims 6-11 are encompassed by Group I. Currently added claims 22-42 should also be included in Group I.

According to the MPEP, where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. *See*, the MPEP at 803.01. In establishing that an "undue burden" would exist for co-examination of claims, the Examiner must show that examination of the claims would involve substantially different prior art searches, making the co-examination burdensome. Applicants respectfully submit that examination of the claims in Groups I-IV would not create an undue burden and respectfully request withdrawal of the restriction requirement in this case.

Appl. No. 09/807,757  
Amdt. dated July 2, 2003  
Reply to Office Action of June 2, 2003

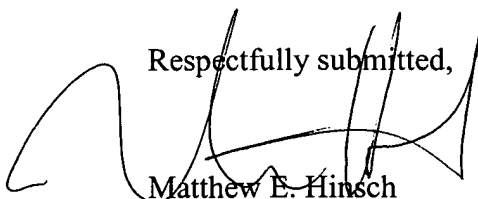
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**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



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